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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL COTA,

Plaintiff

v.

BOBBIE R. WILLIAMS,
JOHN DOE DEPUTY CLERK,

Defendants

Case No.: 3:21-cv-00376-MMD -WGC

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1, 3, 4, 5

This Report and Recommendation is made to the Honorable Miranda M. Du, Chief United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and propose complaint (ECF No. 1-1). He also filed two more IFP applications (ECF Nos. 3, 4), as well as a request for a subpoena to obtain the name of the John Doe defendant (ECF No. 5)

Plaintiff's request to proceed IFP should be granted and he should be required to pay the full \$350 filing fee over time; however, Plaintiff's complaint should be dismissed with prejudice and his request for the subpoena to obtain the name of the John Doe defendant should be denied as moot.

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1).

1 The Local Rules of Practice for the District of Nevada provide: “Any person who is
2 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
3 The application must be made on the form provided by the court and must include a financial
4 affidavit disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

5 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
6 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
7 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the
8 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

9 An inmate submitting an application to proceed IFP must also “submit a certificate from
10 the institution certifying the amount of funds currently held in the applicant’s trust account at the
11 institution and the net deposits in the applicant’s account for the six months prior to the date of
12 submission of the application.” LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been
13 at the institution for less than six months, “the certificate must show the account’s activity for
14 this shortened period.” LSR 1-2.

15 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount
16 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an
17 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly
18 deposits or the average monthly balance for the six-month period immediately preceding the
19 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,
20 the prisoner is required to make monthly payments equal to 20 percent of the preceding month’s
21 income credited to the prisoner’s account. 28 U.S.C. § 1915(b)(2). The agency that has custody
22 of the prisoner will forward payments from the prisoner’s account to the court clerk each time
23 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

1 Plaintiff's first IFP application did not contain his certified trust account statement.
2 Therefore, that application (ECF No. 1) should be denied. Plaintiff's second and third IFP
3 applications (ECF Nos. 3, 4) appear identical and contain the certified trust account statement.

4 Plaintiff's certified account statement indicates that his average monthly balance for the
5 last six months was \$46.39, and his average monthly deposits were \$213.50.

6 Plaintiff's application to proceed IFP (ECF No. 3) should be granted. Plaintiff is required
7 to pay an initial partial filing fee in the amount of \$42.70 (20 percent of \$213.50). Thereafter,
8 whenever his prison account exceeds \$10, he must make monthly payments in the amount of 20
9 percent of the preceding month's income credited to his account until the \$350 filing fee is paid.

10 **II. SCREENING**

11 **A. Standard**

12 Under the statute governing IFP proceedings, "the court shall dismiss the case at any time
13 if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal--
14 (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii)
15 seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.
16 § 1915(e)(2)(A), (B)(i)-(iii).

17 In addition, under 28 U.S.C. § 1915A, "[t]he court shall review, before docketing, if
18 feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in
19 which a prisoner seeks redress from a governmental entity or officer or employee of a
20 governmental entity." 28 U.S.C. § 1915A(a). In conducting this review, the court "shall identify
21 cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
22 (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks
23 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b)(1)-(2).

1 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
2 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) and
3 28 U.S.C. § 1915A(b)(1) track that language. As such, when reviewing the adequacy of a
4 complaint under these statutes, the court applies the same standard as is applied under Rule
5 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule
6 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232
7 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

8 The court must accept as true the allegations, construe the pleadings in the light most
9 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,
10 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less
11 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9
12 (1980) (internal quotation marks and citation omitted).

13 A complaint must contain more than a "formulaic recitation of the elements of a cause of
14 action," it must contain factual allegations sufficient to "raise a right to relief above the
15 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
16 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
17 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a
18 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at
19 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20 A dismissal should not be without leave to amend unless it is clear from the face of the
21 complaint that the action is frivolous and could not be amended to state a federal claim, or the
22 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
23 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

1 **B. Plaintiff's Complaint**

2 Plaintiff's complaint names Douglas County Clerk of Court Bobbie R. Williams and a
3 John Doe Deputy Clerk. (ECF No. 1-1 at 1-2.) Plaintiff alleges that on August 3, 2021, he mailed
4 a state civil rights complaint to Defendants to file. On August 9, 2021, the document was
5 stamped received and returned to Plaintiff seeking the \$285 filing fee. Plaintiff claims that
6 Defendants then illegally informed all defendants of the pending civil complaint before Plaintiff
7 could serve them. Plaintiff asserts that the Defendants had a duty to keep the documents
8 confidential. Plaintiff alleges that once the complaint was stamped received, the Clerks had a
9 duty to keep it confidential.

10 Plaintiff goes on to allege that his equal protection rights were violated when the
11 complaint was not kept confidential.

12 Clerks have absolute quasi-judicial immunity from damages for civil rights violations
13 when they perform tasks that are an integral part of the judicial process. *Morrison v. Jones*, 607
14 F.2d 1269, 1273 (9th Cir. 1979). Moreover, Plaintiff is mistaken that there is a duty of
15 confidentiality with respect to documents sent to the court for filing. A civil rights complaint is
16 by its very nature a public document unless a party has filed a motion for leave to seal the
17 document, which for a complaint, requires a showing of compelling reasons. Plaintiff has filed a
18 copy of the civil rights complaint with this court, which demonstrates he did not seek to have it
19 filed under seal.

20 For these reasons, Plaintiff's complaint should be dismissed with prejudice.

21 **III. RECOMMENDATION**

22 IT IS HEREBY RECOMMENDED that the District Judge enter an order:
23

1 (1) **DENYING** Plaintiff's IFP application at ECF No. 1, but **GRANTING** Plaintiff's IFP
2 application at ECF No. 3 and **DENYING AS MOOT** the IFP application at ECF No. 4. Plaintiff
3 is required to pay, through NDOC, an initial partial filing fee in the amount of \$42.70, within
4 thirty days of the entry of any order adopting and accepting this Report and Recommendation.
5 Thereafter, whenever his prison account exceeds \$10, he is required to make monthly payments
6 in the amount of 20 percent of the preceding month's income credited to his account until the full
7 \$350 filing fee is paid. This is required even if the action is dismissed, or is otherwise
8 unsuccessful. The Clerk should be directed to **SEND** a copy of an order adopting and accepting
9 this Report and Recommendation to the attention of **Chief of Inmate Services for the Nevada**
10 **Department of Corrections**, P.O. Box 7011, Carson City, Nevada 89702.

11 (2) The complaint (ECF No. 1-1) should be **FILED**.

12 (3) The action should be **DISMISSED WITH PREJUDICE**.

13 (4) Plaintiff's motion for a subpoena (ECF No. 6) should be **DENIED AS MOOT**.

14 Plaintiff should be aware of the following:

15 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
16 this Report and Recommendation within fourteen days of being served with a copy of the Report
17 and Recommendation. These objections should be titled "Objections to Magistrate Judge's
18 Report and Recommendation" and should be accompanied by points and authorities for
19 consideration by the district judge.

1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

4 Dated: January 4, 2022



William G. Cobb
United States Magistrate Judge